

JUN 8 1995

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

VARITY CORPORATION,

*Petitioner,*

—v.—

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on Behalf of Themselves and as Rep-  
resentatives of a Class of Persons Similarly Situated, JOHN  
ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON,  
CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS  
GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and  
the Estate of WALTER SMITH, individually,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**JOINT APPENDIX**

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LIST OF DOCUMENTS PRINTED  
IN APPENDIX TO PETITION  
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The items set forth below have been previously printed in the Petition for a Writ of Certiorari. Pursuant to Rule 26.1, they are not reproduced herein, but for the convenience of the Court are listed in chronological order (with their corresponding page numbers in the appendix to the Petition).

PETITION PAGE

Opinion of the United States Court of Appeals for the Eighth Circuit Denying Plaintiffs' Motion for Preliminary Injunction, dated February 15, 1990 .....	116a
Order of the United States District Court for the Southern District of Iowa, dated March 26, 1993 .....	24a
Findings of Fact and Conclusion of Law of the United States District Court for the Southern District of Iowa, dated March 26, 1993 .....	48a
Opinion of the United States Court of Appeals for the Eighth Circuit, dated September 29, 1994.....	1a
Order of the United States Court of Appeals for the Eighth Circuit Denying Petition for Rehearing and Suggestion for Rehearing En Banc, dated December 5, 1994 .....	125a
Opinion of the United States Court of Appeals for the Eighth Circuit, dated December 8, 1994 .....	22a

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

October 26, 1988	Complaint filed.
December 13, 1988	Defendants' motion to dismiss the complaint filed.
December 19, 1988	Plaintiffs' motion for preliminary injunction filed.
July 14, 1989	Order of the district court granting plaintiffs' motion for preliminary injunction and denying defendants' motion to dismiss.
July 25, 1989	Defendants' notice of appeal to the Eighth Circuit from order granting preliminary injunction filed.
August 8, 1989	Answer filed.
September 1, 1989	Plaintiffs' motion for class certification filed.
February 15, 1990	Decision of Eighth Circuit vacating preliminary injunction.
April 18, 1990	Defendants' motion for summary judgment filed.
September 11, 1990	Order of the district court granting defendants' motion for summary judgment as to retiree-plaintiffs, and certifying that order for interlocutory appeal to the Eighth Circuit.
September 21, 1990	Plaintiffs' motion to file interlocutory appeal pursuant to 28 U.S.C. § 1292(b), seeking reversal of district court order



## J.A. 2

	granting summary judgment as to retiree-plaintiffs filed.
November 14, 1990	Decision of the Eighth Circuit denying plaintiffs' motion to file interlocutory appeal from district court order granting summary judgment for defendants as to retiree-plaintiffs.
November 26, 1990	Plaintiffs' motion for reconsideration of order granting summary judgment for defendants as to retiree-plaintiffs filed.
June 4, 1991	Order of the district court granting plaintiffs' motion for reconsideration, vacating prior grant of summary judgment as to retiree-plaintiffs, and granting plaintiffs' motion for class certification.
August 16, 1991	Amended Complaint filed.
August 26 - September 23, 1991	Jury trial, days one through eighteen, including rendering of verdict.
September 30, 1991	Judgment entered.
October 15, 1991	Defendants' motion for judgment notwithstanding verdict or, in alternative, for new trial filed.
March 26, 1993	Findings of fact and conclusions of law of the district court.

## J.A. 3

March 26, 1993	Order of the district court granting in part and denying in part motions for judgment notwithstanding verdict and new trial.
April 15, 1993	Plaintiffs' election of remedies filed.
April 22, 1993	Defendants' notice of appeal filed.
April 26, 1993	Plaintiffs' notice of appeal filed.
September 29, 1994	Decision of the Eighth Circuit affirming the judgment of the district court and remanding.
October 13, 1994	Defendants' petition for rehearing with suggestion for rehearing en banc filed.
October 13, 1994	Defendants' motion to clarify the September 29, 1994 decision of the Eighth Circuit filed.
December 5, 1994	Order of the Eighth Circuit denying defendants' petition for rehearing with suggestion for rehearing en banc, with Judge Hansen and Judge Bowman voting to grant the suggestion for rehearing en banc.
December 8, 1994	Order of the Eighth Circuit granting defendants' motion to clarify September 29, 1994 decision of the Eighth Circuit.

J.A. 4

March 6, 1995

Defendants' petition to the United States Supreme Court for a writ of certiorari to the Eighth Circuit filed.

April 24, 1995

Order of the United States Supreme Court granting defendants' petition for a writ of certiorari.

J.A. 5

EXCERPT FROM MASSEY-FERGUSON INC.  
BENEFITS PLAN  
(EXCERPT FROM TRIAL EXHIBIT 156)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

---

CIVIL No. 88-1598-E

---

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

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[\*]<sup>1</sup>

**MASSEY FERGUSON INC.  
EMPLOYEE BENEFITS PLAN  
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<sup>1</sup> Bracketed asterisks indicate beginning of page in original document.

APPENDIX A. Long-Term Disability Benefits for  
Salaried Employees<sup>2</sup>

APPENDIX B. (1) Accident & Health Benefits for  
Salaried Employees<sup>2</sup>

[\*]

APPENDIX B. (2) Benefits for Employees of United  
States Bargaining Units<sup>2</sup>

APPENDIX B. (3) Accident and Health Benefits for  
Hourly Employees of Badger Northland  
Inc. Subsidiary of Massey-Ferguson Inc.<sup>2</sup>

APPENDIX B. (4) Accident and Health Benefits for  
Salaried Employees of Badger Northland  
Inc. Subsidiary of Massey-Ferguson Inc.<sup>2</sup>

APPENDIX B. (5) Accident and Health Benefits for  
Hourly Retirees of the Former Batavia,  
New York Plant<sup>2</sup>

[\*]

<sup>2</sup> Material not included in Joint Appendix.

**MASSEY-FERGUSON INC.  
EMPLOYEE BENEFITS PLAN**

*Section 1. Establishment of Plan:*

Massey-Ferguson Inc., a Maryland corporation, (herein called the "Company"), hereby creates and establishes an employee benefits plan, which shall be known respectively, as from time to time amended or supplemented, as the Massey-Ferguson Inc. Employee Benefits Plan (herein called the "Plan"), pursuant to which the Company and certain of its present and future subsidiary or affiliated companies, which adopt the Plan with the consent of the Company, may provide benefits to those of their employees who qualify for eligibility under the terms of the Plan. It is the intention of the Company that there be created a "Voluntary Employees' Beneficiary Association" under Section 501(c)(9) of the Internal Revenue Code of 1954 as amended (hereinafter called the "Code") and the regulations promulgated thereunder. The terms of the Plan are as follows:

*Section 2. General Definitions:*

Wherever used herein, unless the context clearly indicates otherwise, the following words, wherever capitalized, shall have the following meanings:

[\*]

- 2.1 "Act" means the Employee Retirement Income Security Act of 1974 (including amendments of the Code affected thereby), and the rules and regulations issued thereunder.
- 2.2 "Board" shall mean the Board of Directors of the Company or the Executive Committee of such Board of Directors when acting for the Board.
- 2.3 "Committee" shall mean the administrative committee duly appointed and constituted to administer the Plan.

- 2.4 "Employer" means the Company and future participating companies to the Plan and Trust Agreement.
- 2.5 "Plan Year" shall mean the twelve month period ending on October 31st of each year, except the initial year when such Plan Year shall be the partial year ending on October 31, 1978.
- 2.6 "Trust" shall mean the Massey-Ferguson Inc. Employee Benefits Trust Agreement as in effect from time to time. Said Trust Agreement is hereby incorporated into this Plan by reference. "Trust Fund" shall mean the fund held by the Trustee of the Trust under the Plan.
- 2.7 "Trustee" shall mean the person appointed from time to time by the Board. A corporation or a national banking association is a person for purposes of this Plan.
- 2.8 "Voluntary Employees' Beneficiary Association" shall mean the association of Employees created upon execution [\*] of the Plan and Trust pursuant to § 501(c)(9) of the Code for the purpose of providing for the payment of benefits to members of the Association in accordance with provisions of the Plan and Trust.

*Section 3. Long-Term Disability Benefits:*

Long-term disability benefits shall be provided for certain salaried employees under the following terms and conditions:

- 3.1 A plan of long-term disability benefits marked Appendix A has been attached hereto and is hereby incorporated by reference. Such benefits shall be provided in accordance with this Section 3 and other applicable provisions of the Plan and Trust.
- 3.2 "Effective Date" of Section 3 means the first day of August, 1978.



- 3.3 "Employee" under this Section 3 means all active salaried employees of the Company, who meet the requirements for eligibility set forth in Appendix A of this Plan.
- 3.4 The Plan of benefits set forth in Appendix A may be amended from time to time in accordance with Section 7 of this Plan.

*Section 4. Medical and Accident Benefits.*

Medical, accident and other benefits shall be provided for certain employees under the following terms and conditions:

[\*]

- 4.1 A plan of benefits marked Appendix B has been attached hereto and is hereby incorporated into this Plan by reference. Such benefits shall be provided in accordance with this Section 4 and other applicable provisions of the Plan and Trust.
- 4.2 The "Effective Date" of Section 4 means the first day of November, 1978.
- 4.3 "Employee" under this Section 4 means all employees of the Company who meet the requirements for eligibility set forth in Appendix B of this Plan.
- 4.4 Employees and dependents may be required to contribute under certain circumstances towards the cost of benefits with respect to coverage under the medical and accident benefit provisions of Section 4 of this Plan. Employees and dependents who may be required to contribute, circumstances under which they may be required to contribute, and the amount of contributions are set forth below:
- 4.4.1 - All Employees on an Employer-approved leave of absence may continue, for up to twelve calendar months, all benefits under this Section, by payment to the Plan of the

appropriate monthly contributions; provided, however, that hourly Employees on leave of absence for local union business are not eligible for such continuation under the terms of the collective bargaining agreements. The required contributions are:

- (i) Salaried Employees- bargaining and non-bargaining:

[\*]

— Employee only benefits	\$ 34.34
— Employee and dependent benefits	118.14

- (ii) Hourly Employees—bargaining:

— Employee only benefits	\$ 38.49
— Employee and dependent benefits	125.20

- 4.4.2 - Surviving dependents of a deceased, salaried Employee who was a participant in Part 2 of the Employer-sponsored Pension Plan, and who was under Age 55 at the time of death, may continue coverage under this Part by making a monthly contribution to the Plan. The monthly contribution shall be the lesser of (a) an amount determined by multiplying the number of covered dependents by \$34.34 or (b) \$118.14.

- 4.4.3 - Surviving dependents of a deceased hourly Employee may continue coverage per the collective bargaining agreement. To be eligible, there must be, at the time of the Employee's death, a surviving spouse at least 45 years of age. Coverage for such dependents may be continued to the earlier of:

- (i) The spouse's attainment of age 62;  
(ii) Remarriage of the spouse;



- (iii) The spouse's attainment of eligibility for full widow or widower's insurance benefits or old age survivor's benefits under the Federal Social Security Act (as now in effect or hereafter amended).

The required monthly contribution for continuation of coverage for surviving dependents of deceased hourly Employees is the lesser of (a) an amount determined by multiplying the number of covered dependents by \$38.49 or (b) \$125.20.

- 4.4.4 - Hourly Employees not on Supplemental Unemployment Benefits while on a layoff, qualifying under Section 1.03 of the Massey-Ferguson Inc. Supplemental Unemployment Benefit Plan, may continue for a period of twelve calendar months, benefits [\*] under this Section by paying to the Plan the appropriate monthly contribution. The required contributions are:

(i) Employee only benefits	\$ 38.49
(ii) Employee and dependent benefits	125.20

- 4.5 The Plan of Benefits set forth in Appendix B may be amended from time to time in accordance with Section 7 of this Plan.

#### *Section 5. Funding:*

Each Employer shall make such contributions under the Plan to the Trust at such time and in such amounts as shall be determined by the Board to be necessary to maintain the Plan on a sound financial basis and to provide the benefits payable under the Plan.

#### *Section 6. Administration by Committee*

- 6.1 The Committee shall consist of a Chairman and not less than two, nor more than four other individuals who shall be appointed by the Board to serve at the pleasure of the Board. Any member of the Committee may resign and his successor, if any, shall be appointed by the Board. The Committee shall be responsible for the general administration and interpretation of the Plan and for carrying out its provisions, except to the extent all or any of such obligations specifically imposed on the Trustee or the Board. The Chairman of the Committee shall also serve as the Plan Administrator, and shall be agent [\*] for service of legal process of the Plan. The Chairman may be empowered and act for the Committee as it so determines.
- 6.2 The Committee shall also elect a Secretary and may elect an acting Secretary, either of whom may be, but need not be, a member of the Committee. The Committee may appoint from its membership, such subcommittees with powers as the Committee shall determine, and may authorize one or more of its members, or any agent, to execute or deliver any instruments or to make any payment in behalf of the Committee.
- 6.3 The Committee shall hold such meetings upon such notice at such places and at such intervals as it may from time to time determine. Notice of meetings shall not be required if notice is waived, in writing, by all of the members of the Committee at the time in office, or if all such members are present at the meeting.
- 6.4 A majority of the members of the Committee, at the time in office, shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting, shall be by vote of a majority of those present at any such meeting and entitled to vote. Resolutions may be adopted

or other action taken, without a meeting, upon written consent thereto, signed by all of the members of the Committee.

[\*]

- 6.5 The Committee shall maintain full and complete records of its deliberations and decisions. Its records shall contain all relevant data pertaining to individual Employees and their rights under the Plan and in the Fund.
- 6.6 Subject to the limitations of the Plan and of the Act, the Committee may, from time to time, establish rules or by-laws for the administration of the Plan and the transactions of its business.
- 6.7 No individual member of the Committee shall have any right to vote or decide upon any matter relating solely to himself or to any of his rights or benefits under the Plan (except that such member may sign unanimous written consent to resolutions adopted or other action taken without a meeting).
- 6.8 The Committee may correct errors and, so far as practical, may adjust any benefit, credit or payment accordingly.
- 6.9 Subject to the claims procedure set forth in Section 11, the Committee shall have the duty and authority to interpret and construe the provisions of the Plan and to decide any dispute which may arise regarding the rights of Employees hereunder, which determinations shall apply uniformly to all persons similarly situated and shall be binding and conclusive upon all interested persons.
- 6.10 The Committee may engage an actuary, attorney, accountant, [\*] or any other technical advisor on matters regarding the operation of the Plan and to perform such other duties as shall be required in connection therewith, and may employ such clerical and related

personnel as the Committee shall deem requisite or desirable in carrying out the provisions of the Plan. The Committee shall, from time to time, but no less frequently than annually, and with the advice of an actuary, review the financial condition of the Plan and determine the financial needs of the Plan in relation to the liabilities and obligations thereof and the requirements of the Act. The Committee shall communicate such financial needs to the Company and to the Trustee so that the funding policy and investment policy may be appropriately coordinated to meet such needs.

- 6.11 No fee or compensation shall be paid to any member of the Committee for his services as such.
- 6.12 The Committee shall be entitled to reimbursement out of the Trust Fund for its reasonable expenses properly and actually incurred in the performance of its duties in administration of the Plan, provided that the Board may, by written notice to the Trustee, provided that all or any portion of such expenses shall be paid by the Company.
- 6.13 The Committee shall determine whether an individual is an Employee, and the decision of the Committee shall be [\*] final and conclusive.

*Section 7. Management of Funds and Amendment or Termination of Plan:*

- 7.1 All assets of the Plan shall be held in a Trust which shall be established and administered to fund and to provide for the payment to the Employees or their dependents or their successors in interest benefits as provided in the Plan out of the income and principal of the Trust. All Fiduciaries (as defined in the Act), with respect to the Plan, shall discharge their duties as such solely in the interest of the Employees or their dependents or their successors in interest, and (i) for



the exclusive purposes of providing benefits to Employees or their dependents or their successors in interest and defraying reasonable expenses of administering the Plan, including the Trust which is a part of the Plan, (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, and (iii) in accordance with the Plan and Trust, except to extent such documents may be inconsistent with the Act. Notwithstanding the foregoing provisions of this Section 7.1, the following special provisions shall apply:

[\*]

- 7.1.1 - Initial Non-Qualification: If the Plan fails initially to satisfy the qualification requirements of Section 501(c)(9) of the Code, and if the Company declines to amend the Plan to satisfy such qualification requirements, contributions made prior to the determination that the Plan has failed to qualify, shall be returned to the Company.
- 7.1.2 - Disallowance of Deduction: To the extent that a Federal Income Tax deduction is disallowed for any contribution made by an Employer, the Trustee shall immediately refund to the Employer, the amount so disallowed, upon presentation, within one year of the date of such disallowance, of evidence thereof and a demand by the Employer for such refund.
- 7.1.3 - Loss of Qualified Status: If it is determined that the Plan does not constitute a qualified Plan for any Plan Year, there shall be returned to each Employer, upon demand,

any contribution made by each Employer, with respect to any year in which the qualified status is denied, provided that demand is made by each Employer and refund is made by the Trustee, within one year of the date of denial of qualification of the Plan.

- 7.1.4 - If, following a complete termination of the Plan, there are assets in the Trust Fund after all liabilities of the Plan to Employees or their dependents or their successors in interest have been satisfied, such remaining assets shall be distributed among the Employers in accordance with the determination made by the Board except as otherwise provided under the Act.
- 7.1.5 - In the case of a contribution made by a mistake in fact, such contribution shall be returned to the appropriate Employer without interest or other increment, as soon as practical, but not later than one year after payment thereof.
- 7.2 The Company and the Trustee shall enter into an appropriate Trust Agreement, which shall be a part of the Plan, for [\*] the administration of the Trust under the Plan. Such agreement shall contain such powers and reservations as to controls and disbursement of the funds of the Trust, and such other provisions not inconsistent with the provisions of this Plan and its nature and purpose, and the Act, as shall be agreed upon and set forth therein. Said agreement shall provide that the Board may remove the Trustee at any time, upon reasonable notice, that the Trustee may resign at any time, upon reasonable notice, and that upon such removal or resignation of the Trustee, the Board shall designate a successor-Trustee.

- 7.3 All requests, directions, requisitions and instructions of the Committee to the Trustee shall be in writing and signed by the Committee's Chairman or acting Chairman and by its Secretary or acting Secretary.
- 7.4 The Company hereby reserves the right, by action of the Board, to amend or terminate the Plan or Trust at any time, provided no such amendment or termination shall have the effect of diverting the Trust funds to purposes other than the exclusive benefit of the Employees except as provided in Section 7.1. However, the right to amend or terminate the Plan shall not, in any way, affect an Employee's right to claim benefits, diminish, or eliminate any claims for benefits under the provisions of the Plan to which the Employee shall have become entitled prior [\*] to the exercise of the Company's right, through its Board, to terminate or amend.

*Section 8. Allocation of Responsibilities Among Named Fiduciaries:*

- 8.1 The Named Fiduciaries, with respect to the Plan and the responsibilities allocated to each, are as follows:

8.1.1 - Board:

- (i) To amend the Plan;
- (ii) To appoint and remove Trustees under the Plan;
- (iii) To determine the amount to be contributed to the Plan by the Company and each Employer; and
- (iv) To terminate the Plan.

8.1.2 - Committee:

- (i) To interpret the provisions of the Plan and to determine the rights of Employees under the Plan, except to the extent otherwise provided in Section 11 relating to claims procedure;

- (ii) To administer the Plan in accordance with its terms, except to the extent powers to administer the Plan are specifically delegated to another named fiduciary or other person or persons as provided in the Plan;
- (iii) To direct the Trustee in the distribution of the Trust assets; and
- (iv) To determine the eligibility of any person to be, or to become, an Employee under the Plan.

8.1.3 - Plan Administrator:

- (i) To file such reports as may be required to the United States Department of Labor, [\*] the Internal Revenue Service, and any other governmental agencies to which reports may be required to be submitted from time to time;
- (ii) To comply with requirements of law for disclosure of Plan provisions and other information relating to the Plan to Employees and other interested parties; and
- (iii) To administer the claims procedure to the extent provided in Section 10.

8.1.4 - Trustee:

- (i) To invest and reinvest Trust assets;
- (ii) To make distributions to Plan Employees as directed by the Committee;
- (iii) To render annual accountings to the Committee as provided in the Trust Agreement; and
- (iv) Otherwise to hold, administer, and control the assets of the Trust as provided in the Plan and Trust.



- 8.2 Except as otherwise provided in the Act, a Named Fiduciary of the Plan shall be responsible and liable only for its own acts of omission with respect to fiduciary duties specifically allocated to him and designated as his responsibility.
- 8.3 Indemnification by Company: Notwithstanding any foregoing provision, the Company shall indemnify and save harmless each Committee member and the Plan Administrator from any liabilities incurred by them in the exercise and performance of their powers and duties under this Agreement except where attributable to their fraud, misfeasance, willful neglect, [\*] affirmatively proved; but any amount paid by the Company shall be reimbursed to the Company by the Trust Fund, if sufficient funds are available, and shall be deemed an expense for purposes of Subsection 6.12.

*Section 9. Benefits Not Assignable:*

- 9.1 No portion of the benefit, with respect to any Employee, shall be subject, in any manner, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, except as so provided in Section 9.3, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same, shall be void; nor shall any portion of such benefit be in any manner payable to any assignee, receiver, or trustee, or be liable for the Employee's debts, contracts, liabilities, engagements, or torts, or be subject to any legal process to levy upon or attach.
- 9.2 If any Employee shall by physically, mentally, or legally incapable of receiving or acknowledging receipt of any payment under the Plan to which he is entitled, the Committee, upon receipt of satisfactory evidence of his incapacity and satisfactory evidence that another person or institution is maintaining him and that no guardian or committee has been appointed

for him, may cause any payment otherwise payable to him to be made to such person or institution so maintaining him.

[\*]

- 9.3 Medical benefits, provided by this Plan, may be assigned, to physicians, hospitals, and other health care providers, upon the Employee's execution of a plan-provided assignment of benefits form. However, such assignment shall only be effective as to those costs covered by this Plan.

*Section 10. Communication to Employees:*

In accordance with the requirements of the Act, the Company shall communicate the principal terms of the Plan to the Employees. The Company shall make available for inspection, by Employees and their beneficiaries, during reasonable hours at the principal office of the Company and at such other places as may be required by the Act, a copy of the Plan, the Trust Agreement, and of such other documents as may be required by the Act.

*Section 11. Claims Procedure:*

- 11.1 An Employee or his dependent may present a claim for benefits under this Plan by submitting written proof of claim to the Committee or the delegate of the Committee. The Committee shall furnish forms for this purpose. The Committee may, under reasonable circumstances and at any reasonable time, require an Employee or dependent to furnish certification by a physician or other practitioner of the healing arts in support of the claim.
- 11.2 If an Employee or beneficiary believes that he is [\*] entitled to benefits under the Plan which are not being paid to him, he (herein called the "Claimant") may file a written claim with the Plan Administrator (as



defined in Section 6.1). The Plan Administrator shall decide whether the claim shall be allowed in whole or in part. In the event that the Plan Administrator shall wholly or partially deny the claim for benefits made by any Claimant, written notice of such denial shall be furnished to the Claimant within thirty (30) days following receipt of the claim by the Plan Administrator. Such notice shall be worded in a manner calculated to be understood by the Claimant and shall set forth: (i) specific reason or reasons for the denial; (ii) specific references to pertinent Plan provisions on which the denial is based; (iii) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; and (iv) an explanation of the Plan's review procedure. Within sixty (60) days following receipt of such notice by the Claimant, or within sixty (60) days following the close of the above-mentioned thirty-day period, if the claim is not allowed and such notice is not received within such thirty-day period, such Claimant may appeal denial of the claim by filing, in writing, with the Committee, [\*] a written application for review. Following request for such review, the Committee shall fully and fairly review the decision denying the claim. Prior to the decision of the Committee, the Claimant shall be given an opportunity to review pertinent documents and to submit issues and comments in writing. The Committee shall make its decision regarding the merits of the claim promptly, and within sixty (60) days following receipt by it of the request for review (or within 120 days after such receipt, in a case where there are special circumstances requiring extension of time for processing the claim), shall deliver the decision to the Claimant in writing. Such decision shall set forth specific reasons for the decision, shall be worded in a manner calculated to be understood by the

Claimant, and shall cite specific references to the pertinent Plan provisions on which the decision is based. All actions set forth herein to be taken by the Claimant, may likewise be taken by a representative of the Claimant duly authorized by him to act in his behalf in such matters. The Committee may require such evidence as it may reasonably deem necessary or advisable of the authority to act of any such representative. In the event the Claimant shall be the Plan Administrator, all actions set forth in this Section 11 to be taken by the Plan Administrator, shall instead be [\*] taken by the Secretary of the Committee.

#### *Section 12. General Provisions:*

Neither the establishment of the Plan or Trust hereby, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Employee or other person, any legal or equitable right against the Company, or any officer or employee thereof, or the Board, or the Committee, or the Plan Administrator, or the Trustee, except as herein provided. Under no circumstances shall the terms of this Plan constitute a contract of continuing employment or in any manner obligate the Company to continue or discontinue the service of an Employee.

#### *Section 13. Administrative Services Only Contract:*

The Committee shall have the right to direct the Trustee to enter into an Administrative Services Only Contract with a third party Claims Administrator (hereinafter called the "Claims Administrator") whereby the Claims Administrator will furnish administrative services in connection with the Plan. The Administrative Services Only Contract may authorize the Claims Administrator to act as agent for the Committee in receiving and processing claims for ben-

efits under the Plan, disbursing claim payments under the Plan, and performing such addi-[\*]tional duties as set forth in such Administrative Services Only Contract.

*Section 14. Insurance and Reinsurance Contracts:*

The Committee shall have the right to direct the Trustee to enter into contracts of insurance and reinsurance with insurance companies, brokers, or underwriting groups to provide such limitations of liability to the Plan as may be appropriate from time to time.

*Section 15. Adoption by Subsidiary and Affiliate Companies:*

The Company may, by resolution, provide for participation in the Plan and Trust Agreement by other subsidiary or affiliated companies. The following special provisions shall apply to the Company and all such participating subsidiary and affiliated companies ("Employers") to the Plan except as otherwise expressly provided herein or in a separate agreement.

- 15.1 For purposes of the Plan, employment shall not be deemed to be interrupted by the transfer, at any time, of an Employee from the employment of one Employer to the employment of another Employer, it being the intent hereof that interchangeable employment with the Employers, shall not affect adversely, the eligibility or benefits of any Employee affected thereby.
- 15.2 The Committee, as designated by the Board of the Company, [\*] shall be the Committee with respect to all Employers to the Plan.

*Section 16. Miscellaneous.*

- 16.1 Governing Law and Rules of Construction. This Plan shall be governed in all respects, whether as to con-

struction, capacity, validity, performance, or otherwise, by the laws of the State of Iowa.

- 16.2 Interpretation. Wherever reasonably necessary, provisions of any gender shall be deemed synonymous, as shall singular and plural pronouns.
- 16.3 Headings. The index to this Plan and the headings to the Articles and Paragraphs of this Plan are included solely for convenience and shall in no event affect, or be used in connection with, the interpretation of this Plan.
- 16.4 Severability. Each provision of this Plan shall be treated as severable, to the end that, if any one or more provisions shall be adjudged or declared illegal, invalid, or unenforceable, this Plan shall be interpreted, and shall remain in full force and effect, as though such provision or provisions had never been contained in this Plan.
- 16.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which constitutes an original.
- 16.6 Miscellaneous Protective Provisions. It is further agreed:
- [\*]
- (a) Any Named Fiduciary may request and rely upon an opinion of counsel, who may or may not be counsel for the Company, and shall be fully protected for any action taken, suffered or omitted in good faith reliance upon such opinion.
- (b) No recourse under this Plan, or for any action or non-action hereunder, or for any loss or diminution of the Trust Fund, or for any payment or nonpayment of benefits, or for any other reasons whatsoever relating to the Plan, shall be had by any person whomsoever against any stockholder,

officer, director or employee of any Employer as such, past, present or future nor shall such recourse be had against any Employer, any Trustee, any Plan Administrator, the Committee, or any member or Secretary thereof, except for fraud, misfeasance or willful neglect, affirmatively proved.

- (c) Where the establishment of any facts is in question any Named Fiduciary may in its discretion accept as evidence thereof any properly executed instrument or document furnished by any other Named Fiduciary or such other evidence as may seem reasonable under the circumstances.

[\*]

IN WITNESS WHEREOF, the Massey-Ferguson Inc. Employee Benefits Plan is, by the authority of the Board of Directors, hereby executed as of the 24th day of October, 1978.

MASSEY-FERGUSON INC.

[SEAL]

/s/ W.R. MEARNs  
Vice-President

ATTEST:

/s/ E.H. GRAHAM  
Secretary

MEMORANDUM FROM JOHN H. RUTH,  
DATED DECEMBER 1, 1983  
(TRIAL EXHIBIT 585)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

CIVIL No. 88-1598-E

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICCESSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*



## LETTERHEAD OF MASSEY FERGUSON

December 1, 1983

## MEMORANDUM

To: All U.S. Salaried Non-Union Employees  
 From: John H. Ruth  
 Subject: *COMPENSATION IMPROVEMENTS*

As you are aware, we are committed to a break-even level at the end of fiscal 1983 and a profit in 1984. However, we reported a U.S. \$11.9 million loss in Massey-Ferguson Ltd. in our latest quarter.

In developing our compensation improvements for 1984, consideration has been given to your major sacrifices over the past years which contributed to the survival of the Company.

Therefore, we have committed to the following compensation improvements for all active non-union salaried employees and have incorporated them into the 1984 budget.

- Effective January 1, 1984, employee contributions of \$60.00 per family coverage and \$30.00 per single coverage towards health coverage will be eliminated.
- On January 1, 1984, a new Comprehensive Major Medical Plan will be in effect. Full details of the Plan will be available to you in the near future. The major features of the Plan follow:
  - *LIFETIME MAXIMUM*—\$250,000.00 per covered individual
  - *DEDUCTIBLES*— \$100.00—Single  
\$200.00—Family
  - *CO-INSURANCE*—After the deductibles are satisfied, 80% of covered charges will be paid by Massey-Ferguson through the John

Hancock Mutual Life Insurance Co.; 20% paid by the employee.

- *OUT-OF-POCKET MAXIMUM*—The total payment by employees for both the deductible and co-insurance is limited to \$1,100.00—Single, and \$2,200.00—Family, in a calendar year, after which the Plan pays covered expenses at 100% of the reasonable and customary fee for the service.
- *THE LIMITATION ON REASONABLE & CUSTOMARY LEVELS* will be removed to allow a continuing correlation between medical costs and payments under the Plan. [\*]
- *COST CONTAINMENT* will be stressed under the new Plan. There will be financial incentives to use provisions such as Second Surgical Opinion, Pre-admission Testing and Out-Patient/Ambulatory Surgical Facilities.
- For those employees currently receiving COLA, the current cost-of-living allowance will be incorporated into their base rate, effective with the first pay period of 1984. This has the added benefit of improving life insurance coverage as well as the pensionable earnings.
- Effective February 1, 1984, for charges incurred on and after that date, reimbursement for Type I and II Dental Services will increase to 80% from the current 50%. The Limitation on Reasonable & Customary Levels will be removed to allow a continuing correlation between dental costs and payments under the Plan.
- Effective February 1, 1984, a Vision Care Plan will be re-introduced. This Plan will provide benefits at intervals of 24 months and more. A change of prescription will not be required.

J.A. 30

- ° Effective February 1, 1984, the Tuition Aid Program will be reinstated.

As I indicated earlier, we are committed as a Company to make a profit in 1984 and I want to provide salaried non-union employees with both the incentive to make it happen and the opportunity to share in the results. Therefore, I am pleased to announce that the Remuneration Plan has been extended through fiscal 1984 (see attached).

We must become profitable in 1984 and with your commitment we will do so!

/s/ JOHN H. RUTH  
John H. Ruth  
Vice President & General Manager  
Marketing & Distribution Operations

Attachment

J.A. 31

MEMORANDUM FROM B. D. QUANDT,  
DATED DECEMBER, 1983  
(EXCERPT FROM TRIAL EXHIBIT 512)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

\_\_\_\_\_  
CIVIL No. 88-1598-E  
\_\_\_\_\_

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

\_\_\_\_\_



## LETTERHEAD OF MASSEY FERGUSON

memo  
to pensioners  
Massey Ferguson

December, 1983

117560

JENIVIE L JACK  
6417 MOTT AVE  
DES MOINES IA 60311 Y

As a concerned Massey-Ferguson pensioner, we are sure you are aware that the Company has suffered a loss of U.S. \$41.1 million in the nine months which ended October 31, 1983. Despite this, we are committed to making a profit in 1984.

In preparation for 1984, we have spent long hours reviewing the financial needs of our pensioners and employees, balancing their needs with the financial plight of the Company. While we are still concerned with the continuing depressed market conditions and our ability to achieve our financial plan, we are pleased to announce that your gross monthly pension will be increased by \$1.00 effective January 1, 1984. Since First Wisconsin Trust needs additional time to process these increases, your March check will reflect this increased pension plus a retroactive amount for January and February.

Massey-Ferguson provides one of the most complete health care programs available for salaried employees and retirees and their eligible family members. The Massey-Ferguson program provides hospital, surgical, dental, vision, prescription drug and hearing aid benefits.

As you are no doubt aware, health care costs have been escalating at an alarming rate. The outstanding coverage provided by the Company has not escaped this trend. Many major companies have revised their plans to help contain this rate of increase by introducing Comprehensive Major Medical Plans.

We have thoroughly reviewed our benefit plans, and effective January 1, 1984, a new Comprehensive Major Medical Plan will be introduced for all active employees, laid off employees, pensioners and their eligible survivors, and LTD recipients in the U.S.

[\*]

The new Plan covers all health benefits and provides that the employee or pensioner pay part of the early costs through deductibles and coinsurance. Full details are attached. The main features of the new Plan follow:

- *LIFETIME MAXIMUM*—\$250,000.00 per covered individual.
- *DEDUCTIBLES*—\$100.00—Single  
\$200.00—Family
- *COINSURANCE*—After the deductibles are satisfied, 80% of covered charges will be paid by Massey-Ferguson through the John Hancock Mutual Life Insurance Company; 20% paid by the pensioner.
- *OUT-OF-POCKET-MAXIMUM*—The total payment by pensioners for both the deductible and coinsurance is limited to \$1,100.00—Single, and \$2,200.00—Family, in a calendar year, after which the Plan pays covered expenses at 100% of the reasonable and customary fee for the service.
- *COST CONTAINMENT* will be stressed under the new Plan. There will be financial incentives to use provisions such as Second Surgical Opinion, Pre-Admission Testing and Out-Patient/Ambulatory Surgical Facilities.
- *MEDICARE*—After age 65, the Plan will be integrated with Medicare and Medicare will continue to be the first payor. The Company will continue to reimburse pensioners over age 65 for the Medicare Part 'B' premium.
- *DRUG PLAN*—Unchanged.

In addition to the above, we have found it necessary to modify the Dental and Vision Care Plans as follows:

- ° *DENTAL PLAN CHARGES* for Type I and Type II benefits will be reimbursed at 80% of reasonable and customary levels.
- ° *VISION CARE*—The Vision Care Plan will provide benefits at intervals of 24 months or more, with no change of prescription required.

The modified health coverage will continue to provide you with outstanding protection at minimal cost, and will assist the Company in achieving its primary goal of making a profit in 1984.

[\*]

We are aware that you may have questions about the new Comprehensive Major Medical Plan. In order to assist you in answering any queries that you may have, we will install a toll-free number during the week of January 16, 1984. If you wish to take advantage of this service, please call 1-800-247-2123 between the hours of 8:30 AM and 4:00 PM (Central Standard Time) during the period of January 16 - 20, 1984.

In addition, if you require claim forms you should contact the following:

Human Resources Department  
Massey-Ferguson Inc.  
P.O. Box 1813  
Des Moines, Iowa 50306

As you know, the Company, during the last two years, has had two health benefit plans; one for active employees and one for retirees. The plan for active employees has required an employee contribution amount and provided a reduced level of benefits. The high cost of administering two plans combined with escalating health care costs as well as the financial state of the Company require the introduction of a common plan for both active and retired employees.

Sincerely,

/s/ Bryon D. Quandt  
B. D. Quandt  
Director Human Resources

MEMORANDUM FROM JOHN H. RUTH,  
DATED DECEMBER 12, 1983,  
ATTACHING MASSEY-FERGUSON INC.  
COMPREHENSIVE MAJOR MEDICAL PLAN  
(TRIAL EXHIBIT 511)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CIVIL No. 88-1598-E

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CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICISSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

## LETTERHEAD OF MASSEY FERGUSON

December 12, 1983

## MEMORANDUM

To: All U. S. Non-Union Salaried Employees  
 From: John H. Ruth  
 Subject: *EMPLOYEE BENEFIT PROGRAM*

On December 1, 1983 the Company announced changes to several Employee Benefit Programs. The purpose of this communication is to provide details of the Comprehensive Major Medical Plan, to clarify the effect of the changes to the Dental and Vision Care Plans, to restate the provisions related to eligibility, to introduce changes to Claim Processing procedures and to restate the Tuition Aid Program.

A. *COMPREHENSIVE MAJOR MEDICAL PLAN*

Attached is a summary description of the Plan. If there are discrepancies between the summary and the Plan document, the Plan document will prevail.

B. *DENTAL PLAN*

All covered charges incurred on and after February 1, 1984 for Type I—Preventative and Type II—Restorative Services, will be reimbursed at 80% of the current Reasonable & Customary rate.

C. *THE LIMITATION ON REASONABLE & CUSTOMARY levels for the above Plans will be removed to allow a continuing correlation between costs and payments under the Plans.*D. *VISION CARE PLAN*

On February 1, 1984 the Vision Care Plan will provide benefits at intervals of 24 months with or without a prescription change.

E. *HEALTH BENEFIT PLAN ELIGIBILITY*

Individuals participating in the Company's Benefit Plans on December 31, 1983 will be automatically enrolled in the Plans which take effect on January 1, 1984 and February 1, 1984.

Individuals participating in the Company's Benefit Plans on December 31, 1983, may change their status under the Plans if:

- there is a change in marital status;
- there is a change in the employment status of the employee or the employee's spouse;
- the employee has single coverage and acquires an eligible dependent.

Application must be made within 30 days of the above change.

[\*]

Employees not participating in the Company's Benefit Plans on December 31, 1983 and employees who elected single coverage, may make application to re-enroll or change their status in the Plans at any time during the next twelve months with coverage commencing on January 1, 1985.

In addition, employees not participating in the Plans on December 31, 1983 are eligible to re-enroll in the Plans prior to January 1, 1985 if:

- there is a change in marital status;
- there is a change in the employment status of the employee or the employee's spouse;
- the employee acquires an eligible dependent.

Application must be made within 30 days of the above change.



## F. CLAIM PROCESSING

1. Every transaction John Hancock processes cost Massey-Ferguson approximately \$12.00. Employees can help reduce this substantial expense by grouping small claims and submitting them in amounts of not less than \$50.00. Your cooperation ensures that Massey-Ferguson derives the maximum benefit from its benefits dollars.
2. To ensure that claims subject to Coordination of Benefits are properly processed, John Hancock will no longer process claims, for which the Massey-Ferguson Plan is the primary payor, from photocopies of bills or claim forms.

## G. TUITION AID

The Tuition Aid program provides reimbursement of 80% of tuition fees, excluding books, upon successful completion of pre-approved courses.

Employees applying for Tuition Aid must complete a "Tuition Aid Request" MF-2413 and have it approved by their immediate supervisor and the Human Resources Department prior to beginning the course. Reimbursement is dependent upon the receipt of evidence that the course has been successfully completed and an itemized receipt for the tuition fee.

Employees eligible for educational assistance under programs such as "Educational Assistance for Veterans and Servicemen" are *not* eligible for Company-paid Tuition Aid program.

[\*]

Internal Revenue Code, Section 127, which allows tax-free tuition reimbursements termi-

nates December 31, 1983, making tuition reimbursements in 1984 fully taxable. However, legislation is pending which may return these payments to a tax free status. The progress of this legislation is being monitored.

Please forward any questions you may have to your Human Resources office.

/s/ JOHN H. RUTH

John H. Ruth

Vice President & General Manager  
Marketing & Distribution Operations

Attachment

[\*]

MASSEY-FERGUSON INC.,  
COMPREHENSIVE MAJOR MEDICAL PLAN

NOTE: THIS IS A SUMMARY OF THE PLAN. IF THERE ARE DISCREPANCIES BETWEEN THE SUMMARY AND THE PLAN DOCUMENT, THE PLAN DOCUMENT WILL PREVAIL.

[\*]

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#### COMPREHENSIVE MEDICAL PLAN SCHEDULE OF BENEFITS

Effective Date: January 1, 1984

Eligible Class: All U.S. Salaried—Non-Bargaining Employees; U.S. Salaried Perkins Engines—Non-Bargaining Employees; and U.S. Salaried Pensioners, Survivors and LTD claimants—Non-Bargaining.

Waiting Period: 31 days continuous active service, for new hires and rehires.

Spouse: For purposes of this plan—wife or husband while not divorced or legally separated from you.

Dependent Children: Age Limit—end of calendar year in which the dependent attains age 25. Coverage for permanently disabled unmarried children continues.

#### COVERED BENEFITS

##### Cash Deductible:

Individual \$100 per Calendar Year  
Family \$200 per Calendar Year

All covered family members may contribute to the family deductible.

Coinsurance: 80% of eligible covered expenses with the exception of those outlined below.

#### Out-Of-Pocket Maximum:

Individual \$1,000 per Calendar Year  
Family \$2,000 per Calendar Year

All covered family members may contribute to the out-of-pocket limit.

(Note: Coinsurance related to treatment received for nervous and mental disorders/alcoholism and drug abuse and any expenses incurred following expiration of the duration limits shown on Page 2 are not applied to the out-of-pocket maximum.)

Aggregate Lifetime Maximum: \$250,000.00 per covered individual with restoration of up to \$1,000.00 per calendar year.

#### Covered Expenses Paid at 100%:

- Emergency Care for Accidental Injury or Life Threatening Illness
- Second Surgical Opinion Only (Deductible Waived)—Mandatory for Listed Procedures
- Outpatient and Ambulatory Surgery (Charges for Approved Facility Only)—Mandatory for Listed Procedures
- Pre-Admission Testing
- Extended Care Facility
- Home Health Care
- PAID Prescription Drug Coverage (\$2.00 Deductible)
- Hearing Aid Benefit (Deductible Waived)

[\*]

#### LIMITATIONS AND EXCEPTIONS

*Maximum Daily Private or Semi-Private Room and Board Rate* will be considered at 100% of the hospital's charge for the highest priced semi-private accommodations subject to deductible and coinsurance. In other accommodations—will be considered at 100% of the full charge made subject to deductible and coinsurance.



*Nervous and Mental Disorder and Alcohol and Drug Abuse Limits—*

Coinurance	— Outpatient	50%
	— Inpatient	80%
Lifetime Maximum		\$25,000

*Second Surgical Opinion*—If a second opinion is not obtained on Listed Procedures, the Plan will only pay 65% of covered the surgical fee.

*Outpatient and Ambulatory Facility*—If a listed Procedure is performed on an inpatient basis room and board expenses will not be paid, unless confinement is for an emergency or is medically necessary.

*Duration Limits—*

Inpatient Nervous and Mental Disorder/ Alcoholism and Drug Abuse	90 Days per Calendar Year
Outpatient Nervous and Mental Disorder/ Alcoholism and Drug Abuse	50 Visits per Calendar Year
Extended Care Facility	120 Days per Period of Confinement or Calendar Year
Home Health Care	60 Visits at 4 Hours per Visit

*Room and Board Charge for Weekend Admission* (Friday afternoon through Sunday morning) for elective and/or non-emergency surgery will not be paid.

*Hearing Aid Benefit*

Audiometric Examination	\$30.00
Hearing Aid Evaluation Test	\$30.00
Hearing Aid, Including Mold	\$275.00

(Note: Benefits are available for each subsequent hearing aid once every three years.)

THE RIGHT IS RESERVED BY THE PLAN ADMINISTRATOR TO TERMINATE, SUSPEND, WITHDRAW, AMEND OR MODIFY THE PLAN IN WHOLE OR IN PART WITH RESPECT TO ANY CLASS OR CLASSES OF COVERED INDIVIDUALS AT ANY TIME.

[\*]

SATISFYING THE CASH DEDUCTIBLE

The Cash Deductible is satisfied by incurring, while covered, medical expenses in excess—\$100.00 Single—\$200.00 Family.

Only Covered Expenses incurred in a Calendar Year shall be applied to satisfy the Cash Deductible for that year.

REINSTATEMENT OF AGGREGATE MAXIMUM BENEFIT

On January 1 of each year, the amount of the benefits which became payable in the past but which were not previously reinstated shall be automatically restored by up to \$1,000 but in no event shall the aggregate maximum benefit exceed \$250,000.00.

[\*]

WHAT ARE "COVERED EXPENSES"

The reasonable and customary charges made for any of the following:

1. Hospital Confinement
  - (a) Board and room charges.
  - (b) Charges for other services and supplies furnished by the hospital for use during confinement (but not for special nursing services or physicians' services).
2. Medical treatment or surgical procedure by a physician.

3. Private duty nursing service by a registered or licensed nurse if the physician recommends such service, provided the nurse is not a member of the immediate family or household.
4. Local use of ambulance.
5. Certain services and supplies:
  - (i) prescription drugs and medicines through the PAID Prescription Plan.
  - (ii) anesthetics and oxygen and their administration.
  - (iii) rental of durable medical equipment, designed primarily for use in a hospital for therapeutic purposes.
  - (iv) blood and blood plasma, and their administration, to the extent not replaced by donations.
  - (v) braces, crutches, and prosthesis necessitated by injury or disease occurring while insured (not including repair or maintenance).
  - (vi) x-ray examinations and laboratory tests.
  - (vii) physiotherapy.
6. Diagnosis and treatment of nervous and mental conditions by a psychologist, to the extent they would be covered if made by a psychiatrist.

[\*]

#### 7. Extended Care Facility

Charges for the following services and supplies, if confinement is by means of direct transfer from a hospital in which the individual was confined for at least 3 days, and for the same condition that caused the hospital confinement.

The following are extended care facility services and supplies:

- (i) board and room and nursing care (but not private-duty nurse or attendant).

- (ii) physical therapy, occupational therapy and speech therapy.
  - (iii) medical social service.
  - (iv) biologicals, supplies, appliances and equipment ordinarily provided by the facility for care of patients.
  - (v) medical care by an intern or resident-in-training of a hospital and other diagnostic and therapeutic services furnished to extended care facility patients by a hospital.
  - (vi) other necessary services generally provided to patients by extended care facilities.
8. Tubal legations and voluntary vasectomies. Reversals are not covered.
  9. Pre-Admission testing charges made by a hospital.
  10. Second surgical opinion on the need for undergoing non-urgent surgery.
    - (a) If the second opinion differs from the initial opinion which recommends the surgery, the benefit will also be payable, if the person before undergoing the surgery, obtains a third opinion on the need for the surgery and this opinion is furnished by a physician not involved in either earlier opinion.
    - (b) the benefit payable for a second or third opinion, is an amount equal to the sum of the following charges, to the extent such charges are reasonable and customary:
      - (i) the physician's charge for furnishing such opinion, and
      - (ii) charges incurred for necessary and ancillary tests undergone at the recommendation of the physician furnishing such opinion.

[\*]

- (c) The surgical procedures for which a second surgical opinion is required are:

- (i) breast surgery;
- (ii) cataract surgery;
- (iii) cholecystectomy;
- (iv) inguinal heriorraphy;
- (v) foot surgery;
- (vi) gastroectomy;
- (vii) hemorrhoidectomy;
- (viii) hip replacement;
- (ix) hysterectomy
- (x) knee surgery;
- (xi) prostatectomy;
- (xii) sinus operation;
- (xiii) spinal surgery;
- (xiv) submucous resection of the nasal septum;
- (xv) tonsillectomy.

A SECOND OPINION IS NOT REQUIRED FOR EMERGENCY SURGERY OR ANY SURGICAL PROCEDURE NOT LISTED.

[\*]

11. Outpatient and Ambulatory Surgical Facility Procedures as outlined below. If these specific procedures are not performed in the outpatient department of a hospital, or in an ambulatory surgical facility, the surgery will be reimbursed as a normal covered expense. However, Room and Board charges for those procedures performed in the hospital will *not* be a covered expense under the Plan unless medical necessity requires hospital confinement.

#### SCHEDULE OF OUTPATIENT AND AMBULATORY SURGICAL OPERATIONS

##### OTOLARYNGOLOGY/AUDITORY SYSTEM

- 1. Treatment of closed or open nasal fracture without manipulation.
- 2. Myringotomy including aspiration and/or eustachian tube inflation.

- 3. Tympanostomy (requiring insertion of ventilating tube), local or topical anesthesia; unilateral.
- 4. Tympanostomy (requiring insertion of ventilating tube), local or topical anesthesia; bilateral.
- 5. Tympanostomy (requiring insertion of ventilating tube), general anesthesia; unilateral.
- 6. Tympanostomy (requiring insertion of ventilating tube), general anesthesia; bilateral.

##### GENERAL SURGERY/INTEGUMENTARY SYSTEM

- 7. Biopsy of skin, subcutaneous tissue and/or mucous membrane (including simple closure), unless otherwise listed (separate procedure); one lesion.
- 8. Biopsy of skin, each additional lesion.
- 9. Excision of nail and nail matrix, partial or complete (eg, ingrown or deformed nail), for permanent removal.

[\*]

- 10. Repair of superficial wounds.
- 11. Biopsy of breast; needle (separate procedure).
- 12. Biopsy of breast; incisional.

##### GENERAL SURGERY/DIGESTIVE SYSTEM

- 13. Esophagogastroduodenoscopy, diagnostic.
- 14. Esophagogastroduodenoscopy; with removal of polyp(s).
- 15. Proctosigmoidoscopy; diagnostic (separate procedure).
- 16. Proctosigmoidoscopy; with removal of polyp or papilloma.
- 17. Sigmoidoscopy, flexible fiberoptic; diagnostic.



18. Sigmoidoscopy, flexible fiberoptic; with removal of polyp(s).
19. Surgical removal of impacted teeth.
20. Repair of inguinal hernia, under age 5 years, with or without hydrodelectomy; unilateral.
21. Repair of inguinal hernia, under age 5 years, with or without hydrodelectomy; bilateral.

## GYNECOLOGY/FEMALE GENITAL SYSTEM

22. Biopsy, single or multiple, or local excision of lesion, with or without fulguration (separate procedure).
23. Biopsy of cervix, with or with D&C.
24. Dilation and curettage, diagnostic and/or therapeutic.
25. Legal (therapeutic) abortion, completed with D&C and/or vacuum extraction.
26. Laparoscopy for visualization of pelvic viscera.
27. Laparoscopy for visualization of pelvic viscera; with fulguration of oviducts.

[\*]

## NEUROSURGERY/NERVOUS SYSTEM

28. Excision, benign tumor; subcutaneous.
29. Neurolysis and/or transposition; median nerve at carpal tunnel.

## ORTHOPEDICS/MUSCULOSKELETAL SYSTEM

30. Excision of nail and nail matrix, partial or complete (eg, ingrown or deformed nail) for permanent removal.
31. Reconstruction of nail bed; simple.
32. Reconstruction of nail bed; complicated.

33. Excision of ganglion, wrist (dorsal or volar); primary.
34. Tendon sheath incision for trigger finger.
35. Tenotomy, subcutaneous, single, each digit.
36. Arthrotomy with exploration, drainage or removal of loose or foreign body; metacarpophalangeal joint.
37. Arthrotomy with exploration, drainage or removal of loose or foreign body; interphalangeal joint.
38. Excision of lesion of tendon sheath or capsule (eg, cyst or ganglion).
39. Tenotomy, flexor, single, finger, open, each.
40. Arthroscopy, knee, diagnostic (separate procedure).
41. Arthroscopy, knee, surgical with synovial biopsy.
42. Arthroscopy, knee, surgical, with removal of loose body.
43. Excision of Morton neuroma, single.
44. Tenotomy, open, extensor, foot or toe.
45. Hammertoe operation; one toe (eg, interphalangeal fusion, filleting, phalangectomy).

[\*]

46. Hallux valgus (bunion) correction, with or without sesamoidectomy; simple exostectomy (Silver type procedure).
47. Fractures (Colles' type upper extremities, toes, fingers, clavicular fractures, lower extremities, ankle or foot bones, fibula).

## UROLOGY/URINARY SYSTEM

48. Cystourethroscopy
49. Cystourethroscopy, with calibration and/or dilation of urethral stricture or stenosis, with or without

meatotomy and injection procedure for cystography, male or female, hospital.

50. Meatotomy, cutting of meatus (separate procedure), except infant.
51. Meatotomy, cutting of meatus (separate procedure), infant.
52. Dilation of urethral stricture by passage of sound, male; initial.
53. Dilation of urethral stricture by passage of sound, male; subsequent.
54. Dilation of urethral stricture by passage of filiform and follower, male; initial.
55. Dilation of urethral stricture by passage of filiform and follower, male; subsequent.
56. Dilation of female urethra including suppository and/or instillation; initial.
57. Dilation of female urethra including suppository and/or instillation; subsequent.
58. Vasectomy, unilateral or bilateral (separate procedure) including postoperative semen examination(s).

#### ENDOSCOPY

59. Bronchoscopy; diagnostic, rigid bronchoscope.
60. Bronchoscopy; diagnostic, fiberoptic bronchoscope (flexible).
61. Bronchoscopy; with biopsy, rigid bronchoscope.
62. Bronchoscopy; with biopsy, fiberoptic bronchoscope (flexible).
63. Proctosigmoidoscopy; diagnostic (separate procedure) and minor operative procedures.
64. Sigmoidoscopy, flexible fiberoptic; diagnostic and minor operative procedures.

65. Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; diagnostic procedure and minor operative procedures.
66. Colonoscopy, fiberoptic, beyond splenic flexure; diagnostic procedure and minor operative procedures.

[\*]

#### RESPIRATORY SYSTEM

67. Excision, nasal polyp(s); extensive, unilateral.
  68. Excision, nasal polyp(s); extensive, bilateral.
  69. Bronchoscopy; diagnostic, rigid bronchoscope.
  70. Bronchoscopy; diagnostic, fiberoptic bronchoscope (flexible).
  71. Bronchoscopy; with biopsy, rigid bronchoscope.
  72. Bronchoscopy; with biopsy, fiberoptic bronchoscope (flexible).
12. Home Health Care benefits by a home health agency or certified rehabilitation agency for Covered Home Health Services (excluding custodial or housekeeping care).

The maximum weekly benefit shall not exceed the usual and customary weekly cost for care in an extended care facility and benefits shall not be payable for more than 60 visits during any period of 12 consecutive months. A visit under this plan shall be limited to 4 hours in a 24-hour period. The term "home care" means care and treatment of a covered individual under a plan of care established, approved in writing and reviewed at least every 2 months by the attending physician, unless the attending physician determines that a longer interval between reviews is sufficient.

The term "Covered Home Health Services" means the items and services listed below, but only if the attending physician certifies that:

- (i) Hospitalization or confinement in a skilled nursing facility would otherwise be required.
- (ii) Necessary care and treatment are not available from members of the covered individual's immediate family or other persons residing with the covered individual's immediate family or other persons residing with the covered individual without causing undue hardship.
- (iii) The home care services shall be provided or coordinated by a state-licensed or medicare-certified home health agency or certified rehabilitation agency.

#### List of Covered Home Health Care Items

Part-time or intermittent home nursing care by or under the supervision of a Registered Nurse or a Licensed Practical Nurse (L.P.N.). (In Texas, the Plan will cover service by a R.N. or Licensed Vocational Nurse, L.V.N.)

Part-time or intermittent home health aide services which are medically necessary as part of the home care plan, under the supervision of a registered nurse or medical social worker, which consist solely of caring for the patient.

[\*]

Physical, respiratory, occupational or speech therapy.

Medical supplies, drugs and medications prescribed by a physician and laboratory services by or on behalf of a hospital, to the extent such items would be covered under the plan if the individual had been hospitalized.

Nutrition counseling provided by or under the supervision of a registered dietician where such services are medically necessary.

The evaluation of the need for and development of a program, by a registered nurse, physical extender or medical social worker, for home care when approved or requested by the attending physician.

Any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency because the items and services cannot be made readily available to the individual at home, not including transportation of the individual to use the outpatient facilities.

Excluding, however, any item or service if it would not be included as an inpatient hospital service under Medicare if furnished to an inpatient of a hospital.

- 13. Hearing aids prescribed and based on the most recent audiometric examination, and hearing aid evaluations performed by a physician audiologist.
- 14. Pap smears and routine pregnancy tests, including laboratory and physician's charges.
- 15. Confinement in private room because of medically necessary quarantine.
- 16. Initial emergency care by physicians (not including surgery) and hospitals for treatment of accidental injury or life threatening illness.

[\*]

#### EXCLUSIONS

"Covered Expenses" does not include charges for or in connection with the following:

- 1. General health examination, or eye examinations for astigmatism, myopia or hyperopia. (Please refer to Vision Care Plan.)
- 2. Fitting or cost of eye glasses or hearing aids, except as a result of injury while covered. (Please refer to Vision Care Plan.)
- 3. The prevention or correction of teeth irregularities and malocclusion of jaws by wire appliances, braces or other mechanical aids, or any other care, repair, removal, replacement, or treatment of the teeth, or surrounding



tissues, except, (a) when necessitated by damage to sound natural teeth or surrounding tissues as a result of an injury which occurs while the employee or dependent, as the case may be, is covered under this benefit, or (b) for the excision of impacted unerupted teeth or of a tumor or cyst, or incision and drainage of an abscess or cyst, or (c) for any other oral surgical procedure not involving any tooth structure, alveolar process, or gingival tissues.

4. Transportation or travel other than local use of ambulance.
5. Injury or disease resulting from war or any act of war, whether declared or undeclared, occurring while covered.
6. Cosmetic Surgery or Treatment except when necessitated by an accidental bodily injury occurring while the employee or dependent is covered.
7. Injury, disease or pregnancy which existed before becoming covered under the Plan unless the charge is for an item received after you (or your Dependent), as the case may be, (a) had been without medical care or treatment, and had not consulted a physician, for such injury, disease or pregnancy for 90 days of continuous employment, provided the 90-day period ended on or after the date you (or your Dependent) became covered or (b) had completed 12 consecutive months of being covered under this Plan, or with respect to charges incurred by you on your own account, unless the charge is for an item received after you complete 6 consecutive months of being both covered under this Plan and actively at work. (This exclusion is waived if you or your dependent were covered under the plan in effect on December 31, 1983 and for a child who became covered on or prior to 15 days of age.)
8. Any item received after the Aggregate Lifetime Maximum Benefit is exhausted and before reinstatement of that benefit.

[\*]

9. The calculation of benefits shall not include or be based on any charges for hospital confinement, or any examination, or any surgical, medical or other treatment or any service or supply,
  - (a) furnished without recommendation and approval of a physician acting within the scope of his license;
  - (b) not medically necessary to the care and treatment of any injury, disease, or pregnancy; except that hospital charges for confinement of a new-born child while the mother is in the same hospital shall not be excluded;
  - (c) furnished in connection with an occupational injury or disease;
  - (d) furnished by any government or division thereof, except a program for civilian employees of a government;
  - (e) if the charge would not have been made in absence of benefits or which you are not legally obligated to pay;
  - (f) to the extent the Employer is prohibited by law or regulation from providing benefits for the charge.
10. Charges for hearing aids ordered while covered but delivered more than 60 days after termination of coverage.
11. Charges for hearing aids which are lost or broken unless at time of replacement 3 or more years have lapsed since benefits were last paid by the Plan.

#### PRE-DETERMINATION OF BENEFITS

If, before you agree to undergo a recommended surgical procedure, you wish to obtain a pre-determination of the plan's surgical benefit you should obtain a Pre-Surgical Benefit Determination Form from your employer for you and your

physician to complete. Upon receipt of the form the Claim Processor will pre-determine the benefit and return a copy of the form to you.

[\*]

#### COORDINATION OF BENEFITS

When benefits would be payable under more than one Group Plan, benefits under those Plans will be coordinated as follows:

1. A plan with no provision for coordination of other benefits will be considered to pay its benefits before a plan which contains such a provision.
2. A plan which covers a person other than as a dependent will be considered to pay its benefits before a plan which covers the individual as a dependent.
3. The benefits of a plan which covers the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a plan which covers such person as a dependent of a female person except that in the case of person for whom claim is made on a dependent child,
  - (a) when the parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody;
  - (b) when the parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers the child as a dependent of the parent with custody shall be determined before the benefits of a plan which covers that child as a dependent of the step-parent, and the benefits of a plan which covers that child as a dependent of the step-parent to whom the parent with the custody of the child is currently married will be determined before the benefits of a

plan which covers that child as a dependent of the parent without custody.

Notwithstanding (a) and (b) above, if there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.

4. Where 1, 2 and 3 above do not establish the order of payment, the plan under which the person has been covered for the longer period of time will be considered to pay its benefits before the other.

[\*]

#### HOW BENEFITS BECOME PAYABLE

If you (or your Dependent), while covered, incur Covered Expenses as a result of a nonoccupational injury, or a nonoccupational disease or; a female employee (or a dependent wife) while covered incur covered expenses as a result of pregnancy; and the covered expenses exceed the deductible amount in a calendar year benefits become payable.

#### HOW MUCH IS PAYABLE

After the deductibles are satisfied, 80% of covered charges will be paid. You are responsible for any remaining balance. The deductibles and coinsurance are limited to \$1,000.00—Single, and \$2,200.00—Family in a calendar year, after which the Plan pays 100% of Covered Expenses incurred during the remainder of that calendar year.

#### WHO IS ELIGIBLE

All individuals participating in the Plan which was in effect on December 31, 1983, continue to participate in the Plan which becomes effective January 1, 1984.



New employees and their eligible dependents, rehired employees and their eligible dependents become eligible after satisfying the appropriate waiting period.

#### HOW TO BECOME COVERED

Individuals participating in the Plan on December 31, 1983, may change their status under the Plan if:

- there is a change in marital status;
- there is a change in employment status of the employee or employee's spouse;
- if the status of an employee with single coverage is changed by the addition of an eligible dependent.

Applications must be made within 30 days of the above change.

[\*]

Employees not participating in the Plan on December 31, 1983, and employees who elected Single coverage, may apply for enrollment in the Plan or change their status at any time during the period December 1, 1983 through December 31, 1984, with coverage commencing on January 1, 1985.

Employees not participating in the Plan on December 31, 1983, may re-enroll in the Plan prior to January 1, 1985, if:

- there is a change in marital status;
- there is a change in employment status of the employee or employee's spouse;
- they acquire an eligible dependent.

Application must be made within 30 days of the above change.

New hires and rehires must apply for coverage by completing the appropriate forms within 30 days of becoming eligible.

Employees who are not participating in the Plan on December 31, 1983, who do not elect to apply for re-enrollment prior to January 1, 1985, and new hires and rehires who do

not elect coverage within 30 days of becoming eligible may enroll in the Plan if:

- there is a change in marital status;
- there is a change in employment status of the employee or employee's spouse;
- they acquire an eligible dependent.

Application must be made within 30 days of the above change.

#### WHEN DO BENEFITS TERMINATE

Coverage under the Plan terminates on the date you cease active work with your Employer. Exceptions to this are:

- (i) sickness or injury where coverage continues indefinitely.
- (ii) Leave of Absence—the employee has the option to continue the coverage by paying the appropriate group rate.

[\*]

#### WHEN DO BENEFITS OF A DEPENDENT TERMINATE

- (1) The date your coverage terminates.
- (2) On the date the dependent ceases to qualify as a dependent.

#### EXTENSION OF BENEFITS

If you or your Dependent are wholly disabled on the date coverage under this Plan is terminated, and if charges are incurred as a result of that disabling condition within 1 year after termination and during the continuance of that disability, the benefits shall be payable for the charges so incurred that would have been payable if incurred while covered.



### MODIFICATION OF PROVISION FOR PERSONS ENTITLED TO MEDICARE BENEFITS

Active employees, age 65 to 69, and spouses of active employees, age 65 to 69, who elect in writing to be covered under the Company's Plan will not have benefits under this Plan reduced or eliminated by any benefits provided by Medicare.

Each other person who is covered by Medicare under the Social Security Act will be considered to have full Medicare coverage. (The term "full Medicare coverage" means coverage for all of the benefits provided under Medicare, including benefits made available on an optional basis, whether or not the person is enrolled in all portions of Medicare for which he is eligible.)

Any limitation or exclusion contained herein with respect to services or items furnished by or through a government or agency thereof, shall not apply to any services or items for which benefits are provided under Medicare.

[\*]

### RIGHT OF REIMBURSEMENT

In the event benefits are paid for charges incurred by an employee as a result of accidental bodily injury or sickness sustained by such employee or any eligible dependents,

- (1) The employee shall reimburse the Employer to the extent of such benefit payments (a) out of any recovery by the employee (whether by settlement, judgment, or otherwise) from any person or organization responsible for causing such injury or sickness, or from their insurers, and the Employer shall have a lien upon any such recovery, or (b) if the eligible dependent recovers from the person or organization responsible for causing such injury or sickness, or recovers from their insurers, but in no event shall such employee be required to make reimbursement in an amount exceeding the recovery made from the person

or organization responsible for causing the injury or sickness, or made from their insurers.

- (2) The employee or dependent shall execute and deliver such instruments and papers as may be required by the plan and do whatever else is necessary to secure the rights of the plan under (1) above.

It is agreed that the Employer shall have no obligation under this plan to recover such reimbursement from an employee.

[\*]

### DEFINITIONS

"Full-time employee" means only an employee who works at least 40 hours per week.

"Physician" means a person who is duly licensed (1) to prescribe and administer any drugs, or (2) to perform surgical procedures.

"Hospital" means only a licensed hospital which with respect only to the treatment of alcoholism and drug abuse, shall also mean a treatment or residential facility, or a clinic, licensed or approved for the purposes of such treatment. This does not include a hotel, rest home, nursing home, convalescent home, place for custodial care or home for the aged.

"Reasonable and Customary"—Refers to the general level of charges being made by others of similar standing in the locality where the charge is incurred, when furnishing like or comparable treatment, services or supplies to individuals for a similar disease or injury.

"Medically Necessary" means medical treatment which follows good medical practice; is required for the wellbeing of the patient and is prescribed by qualified medical professionals.

"Pre-Admission Testing" means those laboratory tests and/or x-ray examinations which are normally required prior to inpatient surgery or medical treatment for either surgery or medical treatment which is to commence within seven days subsequent to the testing.

J.A. 62

"Second Surgical Opinion" means that when a person receives a physician's opinion recommending non-urgent surgery, and before undergoing the recommended surgery, that person obtains a second opinion on the need for such surgery furnished by another physician. The term "non-urgent surgery" refers to surgery which can be postponed without undue risk.

"Home Health Agency" means a licensed public agency or private organization which engages primarily in providing skilled nursing and other therapeutic services under the direction of a physician for care and treatment of injury or disease.

J.A. 63

MEMORANDUM FROM W. ZINKEWICH,  
DATED APRIL 24, 1986  
(TRIAL EXHIBIT 47)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CIVIL No. 88-1598-E

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CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

## MASSEY-FERGUSON INTERNAL CORRESPONDENCE

From: W Zinkewich \*\*\* Date: 86-04-24  
 To: N D Arnold Copy:  
 Keith Robson  
 W Ostapchuk

Reference: Wzink /860424/0159

SUBJECT: SUNSHINE—MCC OFFERS OF EMPLOYMENT  
 (CONFIDENTIAL)

## INFORMATION PASSED ALONG TO YOU:

YOU SHOULD RECOGNIZE THAT THE AGREEMENTS CALL FOR MF TO BE RESPONSIBLE FOR ALL TERMINATION COSTS OF EMPLOYEES WHO DECLINE ACCEPTANCE OF THE MCC OFFER OF EMPLOYMENT. MCC OBVIOUSLY WOULD LIKE ALL EMPLOYEES TO SIGN UP, BUT AS YOU ARE LIKELY AWARE, THERE COULD BE MANY EMPLOYEES WHO COULD BE QUITE SKEPTICAL. THEREFORE, I RECOMMEND THAT MF ASSIGNS URGENT REPRESENTATIVE TO THIS PROBLEM. AREAS OF CONCERN ARE WITH FOREMEN ASSOCIATION (INFORMAL UNION) WHERE ALL COULD REFUSE TO SIGN. BILL ZINKEWICH

FROM: J B WELLMAN DATE: 86-04-24, 00:32  
 TO: E M ARUNDELL

COPIES: IPORT WZINK DAELL RDGAR EDL  
 GGAMB RHAR PWPITT

PRINT HARDCOPY FOR SUSAN FREMES—FRASER & BEATTY

IN CONFIRMATION OF OUR CONVERSATION EARLIER THIS WEEK—THE LOGISTICS OF OFFERING EMPLOYMENT TO EMPLOYEES WHO ARE TO BE TRANSFERRED TO MCC AT FIRST SEEMED RELATIVELY SIMPLE. HOWEVER AS WE GET CLOSER TO ACTUALLY MAKING THE OFFERS SOME PROBLEMS RELATED TO REPRESENTING BOTH MF AND MCC ARE ARISING. I BELIEVE IT ESSENTIAL FOR MF TO DESIGNATE A REPRESENTATIVE TO WHOM QUESTIONS WHICH RELATE TO WHAT MF WILL DO IF THE EMPLOYEES DECLINE EMPLOYMENT WITH MCC CAN BE REFERRED. GARY GAMBACORT,

AN MCC EMPLOYEE, WHO HAS BEEN DESIGNATED AS THE CONTACT FOR EMPLOYEE QUESTIONS CANNOT RESPOND ON MF'S BEHALF TO QUESTIONS LIKE

"IF I REFUSE EMPLOYMENT WITH MCC, FOR ANY REASON:

[\*]

- HOW LONG WILL IT BE BEFORE I AM RELIEVED OF MY DUTIES AND OFF THE PAYROLL?
- WILL I QUALIFY FOR THE USUAL SEVERANCE BENEFITS, I.E. SEVERANCE PAY BASED ON LONGEVITY, EARNED VACATION PAY?
- CAN I RETRIEVE MY CONTRIBUTED PENSION FUNDS?
- WHAT WOULD MY STATUS BE: TERMINATED, ACTIVE, ON PAYROLL, OR ON LAYOFF?

IF I AM PRESENTLY ELIGIBLE AS AN MF EMPLOYEE TO RETIRE NOW, DO I HAVE THAT ALTERNATIVE TO ACCEPTING MCC EMPLOYMENT?

THEY ARE ACTUAL EMPLOYEE QUESTIONS WHICH WERE PASSED ONTO US. MANY OF THESE EMPLOYEES WILL INSIST ON KNOWING WHAT MF HAS PLANNED FOR THEM BEFORE THEY WILL BE PREPARED TO COMMIT TO AN OFFER OF EMPLOYMENT WITH MCC.

IT IS TO MF'S ADVANTAGE TO HAVE ALL EMPLOYEES DESIGNATED AS TRANSFERS TO MCC ACCEPT EMPLOYMENT WITH MCC. THE OPPOSITE IS LIKELY TRUE FOR MCC'S POINT OF VIEW. IT THEREFORE, APPEARS THAT IT WOULD BE A CONFLICT OF INTEREST FOR AN MCC EMPLOYEE TO RESPOND ON BEHALF OF MF. IT APPEARS THAT THERE NEEDS TO BE A CLEAR SPLIT OF RESPONSIBILITY IN THIS AREA AND WITH CLOSING SCHEDULED FOR NEXT WEEK THE ISSUE HAS TO BE ADDRESSED URGENTLY.

IT IS ALSO NECESSARY TO REACH A CONSENSUS ON WHAT CONSTITUTES ACCEPTANCE OF EMPLOYMENT WITH MCC IN THE CASE OF AN ACTIVE SALARIED EMPLOYEE PRIOR TO CLOSING.



J.A. 66

YOUR COMMENTS ON THE ABOVE WOULD BE APPRECI-  
ATED.

REGARDS  
JILL WELLMAN

J.A. 67

SIDE-BY-SIDE COMPARISON OF BENEFITS  
(EXCERPT FROM COMPOSITE TRIAL EXHIBIT "A")

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CIVIL No. 88-1598-E

---

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as repre-  
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ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON,  
CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS  
GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and  
the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

LETTERHEAD OF  
MASSEY FERGUSON

*Employee Benefit  
Program U.S.  
Salaried Employees*

In addition to regular compensation, a salaried employee is eligible for the coverage under an extensive benefit program provided by the Company. The following is a brief summary of the major benefits.

*Life Insurance*

Employees are protected under a basic group life insurance plan entirely paid for by the Company. Employees are covered by insurance equal to one year's earnings (bi-weekly base salary  $\times$  26) with additional coverage for eligible commissions and bonuses.

In addition, employees may purchase up to two times annual salary in additional coverage by paying the appropriate premium.

There is also an accidental death provision which provides additional insurance of two and a half times annual salary of \$50,000, whichever is greater.

MASSEY COMBINES  
CORPORATION

*Employee Benefit  
Program U.S.  
Salaried Employees*

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There is also an accidental death provision which provides additional insurance of two and a half times annual salary of \$50,000, whichever is greater.

*Health Benefit Plan*

Subject to a monthly employee contribution of  
\$30.00—Single  
\$60.00—Family

the Company offers a 5 part benefit plan which is subject to a 31 day waiting period.

- Comprehensive Major Medical Plan
- Prescription Drug Plan
- Dental Plan
- Vision Care
- Hearing Aid

1. *Comprehensive Major Medical Plan*

This plan is subject to cash deductibles of \$100 per individual or \$200 per family. After the deductibles are satisfied, 80% of covered charges are paid under the plan, subject to annual out-of-pocket maximums of an additional \$750 per individual or \$1500 per family. There is a lifetime maximum of \$250,000 per covered individual. The coverage, which is subject to a pre-existing condition provision, includes:

*Hospital Benefits:* Hospital board and room charges are paid up to the semi-private rate. Miscellaneous hospi-

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*Hospital Benefits:* Hospital board and room charges are paid up to the semi-private rate. Miscellaneous hospi-

tal expenses while confined are also provided.

**Surgical Benefits:** Paid on the basis of the reasonable and customary charges for the particular surgical procedure. There is a mandatory second surgical opinion provision for a specified list of procedures.

**Medical Benefits:** In-hospital medical is paid on the basis of reasonable and customary charges.

**Diagnostic Benefits:** Diagnostic x-ray and laboratory expenses will be paid on the basis of reasonable and customary charges for such services.

**Maternity Benefits:** The Company pays the reasonable and customary fees for prenatal and postnatal care and for delivery, normal baby expenses (excluding well-baby care), and the mother's hospital expenses.

## 2. Prescription Drugs

This prepaid plan covers the cost of eligible drugs subject to a \$2.00 deduct-

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[\*]

ible per prescription or refill.

## 3. Dental Benefits:

Subject to certain limitations and co-insurance provisions, dental benefits will be paid in an amount based on the reasonable and customary charge for the dental service, including preventive restorative, prosthodontics and orthodontic treatment.

## 4. Vision Care Benefits

Subject to a schedule and certain limitations, vision care benefits provide coverage for examinations, lenses and frames every 24 months.

## 5. Hearing Aid Benefits

Subject to a schedule and certain limitations, this plan provides coverage for audiometric examinations, hearing aid evaluation tests and one hearing aid once in 36 months when the need is indicated.

## Dependent's Benefits

An employee's dependents may be covered subject to satisfying eligibility requirements.

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*Disability Benefit Plan*

The purpose of this plan is to provide short and long term disability benefits to employees who become disabled as the result of bodily injury or illness.

*Tuition Aid*

The Company encourages employees to continue their education and training by taking advantage of the Tuition Aid Program which reimburses 80% of tuition fees (excluding books) for approved courses.

*Vacations*

Employees become eligible for 10 days vacation after 12 months of continuous employment. This increases to 15 days in the third year, 20 days in the tenth year and 25 days in the twentieth year of service.

*Holidays*

Ten days are observed during the year: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day, and New Year's

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Eve Day. In addition, extra days are usually provided during the Christmas shut-down period.

*Pensions*

The Company's Pension Plan provides for normal retirement at age 65, and optional retirement upon completion of 30 years of credited service. Pension benefits are 100% vested after 10 years service. Service for pension purposes begins on the date of hire.

The Company pays the full cost of the Pension Plan.

*Savings Plan*

The Savings Plan provides for matched contributions up to a maximum of 6% of regular compensation with an additional 6% in supplemental savings.

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*Savings Plan*

The Savings Plan provides for matched contributions up to a maximum of 6% of regular compensation with an additional 6% in supplemental savings.

**MASSEY COMBINES CORPORATION  
QUESTIONS AND ANSWERS  
(EXCERPT FROM COMPOSITE TRIAL EXHIBIT "A")**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

---

CIVIL No. 88-1598-E

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CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as repre-  
sentatives of a class of persons similarly situated, JOHN  
ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON,  
CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS  
GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and  
the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

LETTERHEAD OF MASSEY COMBINES CORPORATION  
225 Henry Street ° Brantford, Ontario ° N3T 5M1

The following are questions and answers which have been prepared in anticipation of many concerns that we, as Massey-Ferguson Industries Limited employees, may have in making the decision to accept the offer of employment from the Massey Combines Corporation. They are not intended to answer all questions which you may have but simply address some of the most obvious concerns which may be raised after you have had the opportunity of viewing the video presentation by Mr. Porter.

- Q. 1. What happens if I don't sign the offer of employment letter?
- A. 1. We need a signed acceptance to assist us to process a continuation of your salary and benefits through Massey Combines Corporation. Your signature confirms your acceptance of employment as an MCC employee without disruption of either salary or benefits.
- Q. 2. What happens if I don't accept employment with MCC?
- A. 2. Positions related to the Combines business are part of MCC and, in that regard, it is uncertain whether Massey-Ferguson could offer comparable employment prospects. You would not be eligible for termination benefits from Massey Combines Corporation as you would never have been employed?
- Q. 3. What happens to my benefits, pension, etc.?
- A. 3. When you transfer to MCC, pay levels and benefit programmes will remain unchanged. There will be no loss of seniority or pensionable service.
- Q. 4. Do you expect the terms and conditions of employment to change?

- A. 4. Employment conditions in the future will depend on our ability to make Massey Combines Corporation a success and if changes are considered necessary or appropriate, they will be made.
- Q. 5. When do I start working for MCC and stop working for MF?
- A. 5. Technically, you are working for MCC now. Your acceptance of employment with MCC, however, will be effective as soon as you return the offer letter.
- Q. 6. Will we have the option of continuing employment with MF?
- A. 6. Massey Combines Corporation cannot speak for MF. We are offering you an alternative employment relationship with a corporation that builds and markets combines. We do know that Massey Ferguson will have no involvement with combine production and we cannot therefore speculate on their staffing requirements.
- Q. 7. Will we have the option of transferring back to MF?
- A. 7. Massey Combines Corporation is a company totally separate from MF in both operation and staffing requirements. It is uncertain that the type of transfer relationship which existed when MCC was a division of MF, will continue.
- Q. 8. Are the pensions protected under MCC?
- A. 8. Responsibility for pension benefits earned by employees transferring to Massey Combines Corporation is being assumed by the Massey Combines Corporation Pension Plan.

The assets which are held in the Massey Ferguson Pension Plan to fund such benefits as determined by actuarial calculations, are being

transferred to the Massey Combines Corporation Plan. Such benefits and assets will be protected by the same legislation that protect the Massey Ferguson Pension Plan.

There will be no change in pension benefits as a result of your transfer to Massey Combines Corporation.



TRANSCRIPT OF MESSAGE  
FROM MR. IVAN PORTER  
(EXCERPT FROM COMPOSITE TRIAL EXHIBIT "A")

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CIVIL NO. 88-1598-E

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the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

TRANSCRIPT OF MESSAGE FROM MR. IVAN PORTER  
PRESIDENT—MASSEY COMBINES CORPORATION

Hello, I'm Ivan Porter, President of Massey Combines Corporation. Massey Combines Corporation is a new, stand-alone Company. It is the result of a lot of hard work which started 14 months ago when we established the Combines and Related Equipment Division.

Let's just take a few minutes to review what we've achieved in that time. First, in July 1985, we acquired a range of rotary combines previously manufactured by White Farm Canada Limited. These products will shortly be launched to the market under the Massey brand name. They will enable us to increase sales by competing in a sector of the market from which we have previously been excluded. Second, we are currently implementing a major facilities rationalization program which will consolidate all Engineering, Manufacturing, Marketing and Administrative activities in Brantford. The Engineering group has already moved into a new Research & Development facility on Morton Avenue. Early next year we shall be moving to a new headquarters building currently under construction on Colborne Street. All Manufacturing activities will be consolidated into the Park Road facility. These programs will enable us to reduce costs by approximately 1/3, an essential element in the future success of Massey Combines Corporation, and thirdly, we are currently doing many other exciting things designed to improve the profitability and efficiency of the business, such as, the introduction of innovative methods of Marketing both new and used combines and searching for alternative products to manufacture in the Park Road facility. Later this year we shall be introducing an employee suggestion scheme which will enable you to earn financial rewards by submitting new ideas to help improve the business. All of these activities have been incorporated into a 5 year Business Plan which maps out the way ahead.

It was this Business Plan and our achievements over the last 14 months which gave confidence to our lenders and the governments of Canada and Ontario to support a major

financial restructuring of the Combines & Related Equipment Division. This financial restructuring created Massey Combines Corporation and will provide the funds necessary to ensure its future viability. I believe that with the continued help and support of you we can make Massey Combines Corporation the kind of successful business enterprise which we all want to work for.

Shortly you will be asked to officially confirm your acceptance of employment with Massey Combines Corporation. When you transfer your employment to the Massey Combines Corporation, pay levels and benefit programs will remain unchanged. There will be no loss of seniority or pensionable service. Employment conditions in the future will depend on the success of the Massey Combines Corporation and should changes be deemed appropriate or necessary, they will be made. If you have any questions regarding the transfer of your employment to Massey Combines Corporation, please contact Gary Gambacort, the General Human Resources Manager, located in Brantford.

Finally, despite the depression which persists in the North American economy, I am excited about the future of Massey Combines Corporation. Together we can exploit all available opportunities in the Combines business. I look forward to working with you in the future to ensure the success of Massey Combines Corporation.

Thank You.

LETTER FROM I. PORTER,  
WITH ONE-PAGE ATTACHMENT,  
DATED APRIL 30, 1986  
(EXCERPT FROM COMPOSITE TRIAL EXHIBIT "A")

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

---

CIVIL No. 88-1598-E

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CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
PATRICK MOUSEL, on behalf of themselves and as representatives of a class of persons similarly situated, JOHN ALTOMARE, CHARLES BARRON, ALEXANDER CHARRON, CHARLOTTE CHILES, ANITA CROWE, RAY DARR, DORIS GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME, and the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

MASSEY COMBINES CORPORATION  
225 Henry Street ° Brantford, Ontario ° N3T 5M1

April 30, 1986

Massey Combines Corporation, is now legally a stand-alone Company.

The creation of this new corporation results from a major financial restructuring of Massey-Ferguson Limited and its subsidiaries and will enable us to realize all available opportunities in the combines business. To enable us to accept you as an employee of Massey Combines Corporation and to continue to process the payment of benefits to you, we require that you complete the information below and return this letter to the Human Resources Department in Brantford. An extra copy is attached for your records.

When you accept employment with Massey Combines Corporation, pay levels and benefit programs will remain unchanged. There will be no loss of seniority or pensionable service. Employment conditions in the future will depend on our ability to make Massey Combines Corporation a success, and if changes are considered necessary or appropriate, they will be made.

We are all very optimistic that our new company, has a bright future, and are excited by the new challenges facing all of us.

Yours very truly,

/s/ I. Porter

I. Porter

[\*]

MASSEY COMBINES CORPORATION  
225 Henry Street ° Brantford, Ontario ° N3T 5M1

I accept employment with Massey Combines Corporation effective \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Note: In order to ensure uninterrupted continuation of your pay and benefits, please return this signed acceptance of employment form to the Human Resources Department no later than Monday, May 19, 1986. Offers returned by mail must be postmarked no later than Friday, May 16, 1986.



HANDWRITTEN NOTE FROM IVAN [PORTER]  
TO VICTOR [RICE], DATED AUGUST 1987  
(TRIAL EXHIBIT 80)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

\_\_\_\_\_  
CIVIL NO. 88-1598-E  
\_\_\_\_\_

CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
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the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

Aug/87

*Victor*

Reference our discussions last Friday I have given some thought to what you proposed and must admit to being somewhat perplexed by the complexity of two employers, retention bonuses, long term incentive bonuses etc. etc. I have therefore sat down and tried to develop an approach to and timetable for the next twelve months or so based on what already is in place and what we now see as being the most likely course of events. The base documents I have used are your letters dated January 27, 1986/May 8, 1986 (two separate letters), Vince Lorenzo's letter dated March 1987 and our conversation last Friday.

1. *What is currently in place*

- ° two year secondment to MCC (Feb. 1, 1986 to Jan. 31, 1988)
- ° Base salary Cdn. \$165,000—net eligible for currency equalization practice.
- ° Short-term incentive equal to 50% of base salary at normative level.
- ° Retention bonus Cdn. \$150,000. Eligibility Jan. 31, 1988 but only payable if I stay with Varity until at least Jan. 31, 1989.
- ° Long term incentive—Varity stock options.
- ° Fringe benefits—same as other Varity HQ senior executives.

2. *What is currently foreseen to be most likely course of events*

- ° IP to stay in MCC until summer of 1988 in order to carry out final rites (i.e. restructure, wind-up, sale) and to ensure Varity exposure is minimized.
- ° For internal planning purposes assume IP returns to

[\*]

Varity July 1, 1988 accepting that date could advance or extend depending on actual circumstances.

- ° Varity wish to offer some additional long term retention incentive to IP (stated by VAR to be Cdn. \$100,000 payable on Jan. 31, 1991)

The issues that are perplexing me are as follows:

- i) With the best will in the world it is impossible at this stage to firmly fix a transfer date back to Varity. The date must be dictated by actual circumstances which given the fragile condition of MCC are impossible to predict right now. Therefore in my view the best approach would be to establish some flexible extension of the secondment arrangement to cover the period Feb. 1, 1988 to date of return to Varity.
- ii) it appears illogical to offer IP, at this stage, an additional long term retention incentive. In my view it would be better to offer this at the time IP actually transfers back to Varity. Under the original retention bonus arrangement IP is chained to Varity until Jan. 31 1989 which on current projections is likely to be well after IP returns to Varity. While I am flattered by the offer I want to be sure I have not misunderstood the rationale behind this additional long term retention incentive.

Based on the above I would therefore propose the following for your consideration

[\*]

- 1. Maintain the terms and conditions currently in place through to Jan. 31, 1988.
- 2. In January 1988 agree a flexible extension to the secondment agreement. In this respect we should let the experts—(Harman) define flexible.

- 3. At an appropriate time (assume May/June 1988) agree the terms and conditions of new position in Varity. Introduce the long term retention incentive at this point if still considered appropriate in light of whatever overall Compensation package is agreed.

If you are available we can review this after the meeting planned for August 21.

Ivan Porter

[DATE STAMP]  
OFFICE OF THE  
Aug 12 1987  
CHAIRMAN & CEO

J.A. 88

LETTER FROM VINCE D. LAURENZO,  
TO IVAN PORTER,  
DATED NOVEMBER 2, 1987  
(TRIAL EXHIBIT 88)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CIVIL No. 88-1598-E

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CHARLES HOWE, ROBERT WELLS, RALPH W. THOMPSON,  
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the Estate of WALTER SMITH, Individually,

*Plaintiffs,*

—v.—

VARITY CORPORATION and MASSEY-FERGUSON, INC.,

*Defendants.*

---

J.A. 89

LETTERHEAD OF VARITY CORPORATION

World Headquarters  
595 Bay Street  
Toronto, Canada M6G 2C3

Telephone 416-593-3811  
Telex 065-24210  
Rapifax 416-593-3820

VARITY

*STRICTLY PRIVATE & CONFIDENTIAL*

November 2, 1987

Mr. Ivan Porter  
President  
Massey Combines Corporation  
Massey House  
171 Colborne Street  
Suite 201  
Brantford, Ontario  
N3T 6E1

Dear Mr. Porter:

To recognize your present position at Massey Combines Corporation ("MCC"), we hereby undertake to indemnify you against any personal liability you may incur by reason of your acting in your capacity as President of Massey Combines Corporation and which MCC, because of its difficult financial condition, may be unable to cover.

Paragraph 14 of MCC's by-law No. 1 reads as follows:

Subject to the provisions of Section 136 of the (Ontario Business Corporation) Act, the Corporation shall indemnify a director or officer, a former director or officer, or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor, and his heirs and legal representatives against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him



in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Corporation or such body corporate, if (a) he acted honestly and in good faith with a view to the best interests of the Corporation, and (b) in the case [\*] of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful. The Corporation shall also indemnify any such person in such other circumstances as the Act of law permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law to the extent permitted by the Act or law.

We undertake that if MCC shall fail or appear to be unable to indemnify you as now provided in the quoted section of its by-law we shall fully and promptly indemnify you to the full extent provided therein, and this will be the case notwithstanding any change made to the text of the by-law.

Yours very truly,

/s/ VINCE D. LAURENZO  
Vince D. Laurenzo  
President

LETTER FROM VINCE D. LAURENZO  
TO IVAN PORTER,  
DATED NOVEMBER 2, 1987  
(TRIAL EXHIBIT 89)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
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CIVIL No. 88-1598-E

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World Headquarters  
595 Bay Street  
Toronto, Canada M6G 2C3  
Telephone 416-593-3811  
Telex 065-24210  
Rapifax 416-593-3820

VARITY

*STRICTLY PRIVATE & CONFIDENTIAL*

November 2, 1987

Mr. Ivan Porter  
President  
Massey Combines Corporation  
Massey House  
171 Colborne Street  
Suite 201  
Brantford, Ontario  
N3T 6E1

Dear Mr. Porter:

This letter refers to my letter to you of the same date concerning Varity's indemnification of you as an officer of MCC.

All elements of that letter apply. In addition, the following is required as an integral part of that letter.

The aforementioned letter is to be treated as a confidential document and is not to be divulged in any manner at any time to anyone without the mutual written consent of the writer and the recipient.

Yours very truly,

/s/ VINCE D. LAURENZO  
Vince D. Laurenzo  
President

I hereby acknowledge receipt of the this letter, accept it, and agree to abide by the restrictions set forth in it.

Nov. 27 1987  
Date

/s/ IVAN PORTER  
Ivan Porter